

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, June 15, 2023

Hearing Room 301

1:00 PM

1: -

Chapter

#0.00 Unless other arrangements have been made in advance with the Court, all appearances for this calendar will be via Zoom and not via Court Call. [See Judge Kaufman's posted procedures titled "phone/video appearances" on the Court's webpage.]
All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Docket 0

Tentative Ruling:

- NONE LISTED -

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1:23-10618 Schultz Investments 21, Inc

Chapter 11

#1.00 U.S. Trustee motion under 11 U.S.C. § 1112(b) to dismiss or
in the alternative, to convert case

Docket 20

Tentative Ruling:

Grant.

Pursuant to 11 U.S.C. § 1112(b)(1) and (4)(C), (F) and (H), the Court will dismiss this case. As set forth in the motion and the supporting declaration, the debtor is not in compliance with the reporting and other requirements of the Office of the U.S. Trustee.

The debtor's schedules of liabilities identify a number of secured creditors; in its schedules, the debtor has not identified any unsecured creditors. Because it appears that there will be no distributions of property of the estate to unsecured creditors, the Court concludes that it is in the best interest of creditors and the estate to dismiss this case.

The movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Schultz Investments 21, Inc

Represented By
Dixon G Kummer

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1:23-10618 Schultz Investments 21, Inc

Chapter 11

#1.01 Status conference re: chapter 11 voluntary petition

fr. 6/8/23

Docket 1

Tentative Ruling:

The debtor has not complied with the Order requiring it to file and serve a chapter 11 case status conference report 14 days before the chapter 11 case status conference, nor has the debtor's counsel filed and served an application for employment by June 1, 2023 [doc. 15].

Party Information

Debtor(s):

Schultz Investments 21, Inc

Represented By
Dixon G Kummer

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1:22-11415 21st Century Valet Parking, LLC

Chapter 7

#2.00 Debtor's Motion for Order: (1) Dismissing Chapter 7 Bankruptcy Case,
and (2) Approving Reasonable Administrative Fees and Expenses

Docket 206

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

21st Century Valet Parking, LLC

Represented By
Vahe Khojayan
Kerry L Duffy

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#3.00 Hearing on Confirmation of Debtors' Second Amended
Chapter 11 Subchapter V Plan

Docket 343

***** VACATED *** REASON: Hearing vacated pursuant to order entered
5/25/23 [Dkt.367]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#4.00 Status conference re: chapter 11 subchapter V case

fr. 3/25/21; 4/8/21; 4/22/21; 4/29/21; 7/22/21; 11/18/21; 1/27/22; 7/14/22;
8/25/22; 11/17/22; 2/16/23; 3/23/23

Docket 1

***** VACATED *** REASON: Hearing rescheduled to 11/9/23 at 2:00 pm
pursuant to Order entered 5/25/23. [Dkt.367]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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1:21-10844 Michael Chulak

Chapter 11

#5.00 Status conference re: chapter 11 subchapter V case

fr. 5/12/22; 6/23/22; 8/18/22; 9/1/22; 10/13/22; 12/1/22; 1/26/23; 2/2/23
4/13/23; 4/20/23; 5/11/23

Docket 1

Tentative Ruling:

The Court has set a deadline of September 1, 2023 for the debtor to confirm a chapter 11 plan [doc. 286]. Contrary to the *Order Continuing Chapter 11 Status Conference* [doc. 298], prior to this status conference, the debtor has not timely filed a status report regarding this case, supported by evidence.

The debtor must address the following issues:

Does the debtor intend on reconverting this case to one under chapter 7 of the Bankruptcy Code?

If not, when does the debtor intend to file a fifth amended chapter 11 plan?

Do the debtor and the creditors which objected to confirmation of the debtor's fourth amended chapter 11 plan intend to participate in alternative dispute resolution regarding the terms of a consensual chapter 11 plan?

Party Information

Debtor(s):

Michael Chulak

Represented By
Michael R Totaro
Candice Candice Bryner

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1:22-10148 Landmark 99 Enterprises, Inc.

Chapter 11

#6.00 Post confirmation status conference re: chapter 11, subchapter V case

Docket 1

Tentative Ruling:

Based on the debtor's *Chapter 11 Post Confirmation Status Report #1* [doc. 208], the Court will continue the post-confirmation status conference to **December 7, 2023 at 2:00 p.m.** On or before **November 27, 2023**, the reorganized debtor must file an updated status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) **AND BE SUPPORTED BY EVIDENCE.**

If an order closing the case on an interim basis is entered prior to the continued hearing date, the Court will vacate the continued post-confirmation status conference.

Appearances on June 15, 2023 are excused.

Party Information

Debtor(s):

Landmark 99 Enterprises, Inc.

Represented By
Michael Jay Berger

Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se

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1:23-10219 Danny Trejo

Chapter 11

#7.00 U.S. Trustee's Motion to strike designation of chapter 11 case as subchapter V Under 11 U.S.C. § 1182

Docket 52

Tentative Ruling:

The Court will grant the motion.

I. BACKGROUND

On February 22, 2023, Danny Trejo ("Debtor") filed a chapter 11, subchapter V petition. Debtor is a well-known actor and entrepreneur who has appeared in many films, including, among others, *Desperado*, *Heat*, *From Dusk Till Dawn*, *Con Air*, *Spy Kids* and the *Machete* franchise. *See Subchapter V Status Report* [doc. 35], p. 9. In addition, Debtor works as a drug counselor and is engaged in public service activities. *Id.*

A. Debtor's Assets

In his amended schedule A/B [doc. 46], Debtor identified an interest in two real properties: (1) 15226 Lassen Street, Mission Hills, CA 91345 (the "Lassen Property"), valued at \$1.2 million; and (2) 13118 Branford Street, Pacoima, CA 91331 (the "Branford Property"), valued at \$750,000. As discussed in further detail below, both the Lassen Property and the Branford Property are encumbered by deeds of trust.

Debtor resides at the Lassen Property. *See* doc. 1. In his schedule C [doc. 17], Debtor claimed a \$600,000.00 homestead exemption in the Lassen Property under California Code of Civil Procedure § 704.730. With respect to the Branford Property, Debtor testified at his meeting of creditors that he inherited it from his mother. Exh. D to the Declaration of Alfred Cooper III (the "Cooper Declaration") [doc. 52], p. 99. Debtor further testified that he does not rent the Branford Property out and that his daughter has resided there. *Id.*, p. 101. As of March 21, 2023, the date of the meeting of creditors, the Branford Property was vacant. *Id.*

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In his amended schedule A/B [doc. 46], Debtor identified an interest in several vehicles, including a 2020 Lexus RC-F (the "Lexus"). [FN 1]. Debtor also identified a 100% interest in DT Unlimited, Inc. ("DT Unlimited"), a 100% interest in Starburst 4.0, Inc. ("Starburst") and a 60% interest in Trejo 4.0 Productions, Inc. ("Trejo 4.0"). *See* doc. 46. Debtor listed the value for all 3 entities as "unknown." *Id.*

Starburst is the entity that is paid for Debtor's film and television acting jobs and personal appearances. *See* Exh. D to the Cooper Declaration, p. 137. After Starburst is paid for Debtor's services, funds are transferred from Starburst's account to Debtor's personal bank account, in order for Debtor to pay his living expenses. *Id.*, p. 108. DT Unlimited deals with the income generated from the Debtor's trademarks, licensing, and record label. *Id.*, pp. 105-06 and 136. Trejo 4.0 is an entity that was created to deal with acting projects for Debtor that Debtor's son would direct. *Id.*, p. 111.

B. Debtor's Liabilities

1. Scheduled Secured and Unsecured Debts

In his amended schedule D [doc. 46], Debtor disclosed the following secured debts: (1) a \$263,289.82 lien against the Branford Property in favor of Carrington Mortgage Services, LLC ("Carrington"); (2) a \$292,664.46 lien against the Lassen Property in favor of Gregory Funding; and (3) a \$66,215.71 lien against the Lexus in favor of Toyota Motor Credit Corporation ("Toyota"). In his schedule E/F [doc. 17], Debtor disclosed a nonpriority unsecured claim of Bank of America in the amount of \$7,507.28.

2. Scheduled Priority Debts

In his schedule E/F [doc. 17], Debtor set forth what he characterized as unsecured priority claims of the California Franchise Tax Board (the "FTB"), based on taxes, as follows: (1) \$135,764.07 for 2016; (2) \$95,612.44 for 2017; (3) \$62,806.60 for 2019; (4) \$94,689.22 for 2020; (5) \$201,278 for 2021; and (6) \$64,523 for 2022. Debtor also disclosed the following (allegedly) unsecured priority claims of the Internal Revenue Service (the "IRS"), based on taxes: (1) \$103,004.86 for 2014; (2) \$70,392.86 for 2015; (3) \$921,251.70 for 2016; (4) \$483,757.17 for 2017; (5) \$140,888.82 for 2018; (6) \$36,345.03 for 2019; (7) \$450,051 for 2021; and (8) \$222,271 for 2022. *See* doc.

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17. [FN 2]

3. Claims Filed Against Debtor's Estate

To date, seven creditors have filed proofs of claim against the estate. The chart below summarizes the nature and amount of each claim:

Claimant	Proof of Claim Amount/Basis
Los Angeles County Treasurer and Tax Collector ("LA County")	\$15,877.29 based on property taxes.
Toyota	\$66,215.71 based on financing for the Lexus.
Barclays Mortgage Trust 2002-RPL1 c/o Gregory Funding LLC ("Gregory Funding")	\$294,293.26 based on a promissory note, secured by a deed of trust against the Lassen Property.
Carrington	\$302,806.35 based on a promissory note, secured by a deed of trust against the Branford Property.
The IRS	\$2,251,835.50 based on income taxes.
The FTB	\$233,359.58 based on income taxes.
Bank of America	\$7,556.28 based on a credit card in the name of Starburst.

i. IRS Proof of Claim

As set forth in the IRS' amended proof of claim no. 3-2, Debtor's total IRS debt includes: (1) income taxes in the total amount of \$1,435,139; (2) interest in the total amount of \$389,582.40; and (3) penalties in the total amount of \$427,114.10. These amounts are further broken down as follows:

Year/Type of Claim	Tax	Interest	Penalty
2014 - Secured	\$0.00	\$66,047.53	\$37,690.77
2015 - Secured	\$0.00	\$26,658.29	\$44,235.80

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2016 - Secured	\$581,635.00	\$198,841.00	\$176,350.88
2017 – Unsecured Priority	\$308,476.00	\$45,241.86	
2018 – Unsecured Priority	\$98,592.00	\$17,442.11	
2019 – Unsecured Priority	\$26,578.00	\$2,769.02	
2020 – Unsecured Priority	\$164,643.00	\$13,246.89	
2021 – Unsecured Priority	\$244,882.00	\$16,871.49	
2022 – Unsecured Priority	\$100.00	\$0.00	
2017 – Unsecured General	\$10,233.00	\$2,464.21	
Penalty on Unsecured Priority Claims			\$85,385.21
Penalty on Unsecured General Claims			\$83,451.44
TOTAL:	\$1,435,139.00	\$389,582.40	\$427,114.10

See Proof of Claim No. 3-2.

ii. FTB Proof of Claim

As set forth in the FTB's proof of claim no. 6-1, Debtor's total FTB debt includes: (1) income taxes in the total amount of \$125,317.83; (2) interest in the total amount of

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\$27,236.29; (3) penalties in the total amount of \$80,695.46; and (4) costs in the total amount of \$110. These amounts are further broken down as follows:

Year/Type of Claim	Tax	Interest	Penalty	Costs
2016 - Secured	\$38,862.64	\$4,838.05	\$50,827.88	\$0.00
2017 - Secured	\$61,033.81	\$17,420.90	\$17,327.97	\$56.00
2019 - Secured	\$25,421.38	\$4,977.34	\$12,391.71	\$54.00
2021 - Secured	\$0.00	\$0.00	\$147.90	\$0.00
TOTAL:	\$125,317.83	\$27,236.29	\$80,695.46	\$110.00

See Proof of Claim No. 6-1.

C. Debtor's Income

In his schedule I [doc. 17], Debtor described his occupation as Director of Patient Relations/Actor, and disclosed that he earned gross income in the amount of \$2,166.67 per month as an employee of Western Pacific Med-Corp. In addition, Debtor disclosed that he earns net income in the amount of \$150,000 per month from operating a business and that he receives \$13,151.68 per month from pension or retirement income. *See doc. 17.*

With respect to Debtor's business income, at his meeting of creditors Debtor testified that, prior to filing the petition, Starburst was the only business through which Debtor was earning income and that DT Unlimited and Trejo 4.0 were not producing any income. *See Exh. D to the Cooper Declaration, pp. 105-06 and 111-12.*

In his amended statement of financial affairs [doc. 46], Debtor disclosed that in 2021 he earned \$1,732,662 in gross income from "operating a business," and wages in the amount of \$24,093. In the amended statement of financial affairs, Debtor also disclosed that in 2022, he earned \$3,388,172.75 in gross income from "operating a business," and wages in the amount of \$54,838. In addition, Debtor disclosed that he

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earned \$400,000 in gross income from "operating a business" between January 1, 2023 and the petition date of February 22, 2023. *Id.*

D. The Plan

On May 8, 2023, Debtor filed *Debtor's Subchapter V Chapter 11 Plan* (the "Plan") [doc. 45]. The Plan largely concerns repayment of Debtor's past due income taxes and related interest and penalties. *See* Plan, pp. 5-10. Debtor proposes to pay all claims in full through the Plan. *Id.*, p. 3. For the first five years of the Plan, Debtor will devote the majority of his plan payments to paying his secured and priority tax debt owed to the IRS and the FTB. *See* Exh. 2 to the Plan, p. 1. In addition, in year five of the Plan, Debtor proposes to make a lump sum payment to pay all unsecured claims in full, with no interest. *Id.* According to the Plan, the unsecured claims are comprised of the FTB's nonpriority tax claims in the estimated amount of \$95,839, Bank of America's claim in the amount of \$7,556.28 and a Bank of America "guarantee claim." Plan, p. 10.

E. The Objection to Debtor's Subchapter V Designation

On May 18, 2023, the United States trustee (the "UST") filed the Motion [doc. 52]. According to the UST, Debtor does not meet the statutory definition of a "small business debtor" because he cannot show that 50% or more of his qualifying debts arose from commercial or business activity. Specifically, the UST contends that: (1) Debtor's personal tax debt is not business debt; and (2) Debtor's tax debt did not arise from Debtor's commercial or business activities.

On May 30, 2023, Debtor filed an opposition to the Motion (the "Opposition") [doc. 55]. In a declaration attached to the Opposition, Debtor states that the debt owed to the IRS and the FTB is for tax obligations that arose from Debtor's commercial or business activity. Declaration of Danny Trejo ("Trejo Declaration"), ¶ 3 [doc. 55]. In addition, Debtor contends that the debt owed to Carrington is for non-owner-occupied real estate, and thus it arose from commercial and/or business activities. *Id.* Debtor also asserts that the debt owed to Bank of America was for a business credit card. *Id.* Finally, Debtor acknowledges that the debt owed to LA County, Toyota and Gregory Funding arose from non-business activities. *Id.*

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With respect to his income, Debtor represents that—

Approximately 90% of my income for the tax years reflected in the IRS and FTB proofs of claims filed in my bankruptcy case resulted from my commercial activity as an actor. Therefore, approximately 90% of the tax obligations for the tax years reflected in the IRS and FTB proofs of claims arose from my commercial activities as an actor. The remainder of my tax debt arose from other entertainment related business activities. A very small fraction of my income (less than 2% of my income in 2022 for example) was derived from my work as an employee with Western Pacific Med-Corp., where I am paid via a regular paycheck and taxes are deducted by the employer.

Id., ¶ 4. On June 8, 2023, the UST filed a reply to the Opposition (the "Reply") [doc. 58] and a submission of two unpublished opinions that were cited in the Reply [doc. 59].

II. LEGAL AUTHORITY

A. Statutes Concerning the Definition of a Chapter 11, Subchapter V Debtor

11 U.S.C. § 101(8) provides that the term "consumer debt" means "debt incurred by an individual primarily for a personal, family, or household purpose." Under 11 U.S.C. § 101(51D)(A), the term "small business debtor," subject to a subparagraph not applicable here, means:

a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$3,024,725 [originally "\$2,000,000", adjusted effective April 1, 2022] (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor[.]

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Pursuant to 11 U.S.C. § 1182(1)(A), the term "debtor," subject to a subparagraph not applicable here, means:

a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$7,500,000 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor[.]

11 U.S.C. § 1182(1)(A). "Subchapter V was added to the Bankruptcy Code by the Small Business Reorganization Act of 2019, effective February 19, 2020 (the 'SBRA')." *In re Johnson*, 2021 WL 825156, at *4 (Bankr. N.D. Tex. Mar. 1, 2021). In discussing the relevant legislative history associated with the SBRA, the court in *Johnson* stated that—

Notwithstanding the 2005 Amendments [to the Bankruptcy Code that first introduced the small business debtor chapter 11 provisions], small business chapter 11 cases continue to encounter difficulty in successfully reorganizing....[T]he [SBRA] legislation allows these debtors to file bankruptcy in a timely, cost-effective manner, and hopefully allows them to remain in business which not only benefits the owners, but employees, suppliers, customers, and others who rely on that business.

Id., at *6 (internal citations and quotations omitted).

B. The Burden of Proof

In disputes over a debtor's eligibility to proceed under a particular chapter, courts in the Ninth Circuit have placed the burden on the debtor. *See In re City of Vallejo*, 408 B.R. 280, 289 (9th Cir. BAP 2009) ("The burden of establishing eligibility under § 109(c) is on the debtor."); *see also In re Lewis*, 2019 WL 5777647, at *4 (Bankr. D. Nev. Oct. 3, 2019) ("When eligibility for bankruptcy relief is challenged, the burden of proof rests with the debtor to establish the statutory requirements by a

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preponderance of the evidence.") (citing cases).

The Bankruptcy Appellate Panel for the Ninth Circuit Court of Appeals has held that:

[T]he burden to prove eligibility for subchapter V should be placed on the debtor, especially considering the many advantages subchapter V offers debtors over a "traditional" chapter 11: total plan exclusivity (including modifications) and no disclosure statement requirement; the ability to obtain a discharge on the effective date; and the inapplicability of the absolute priority rule. It also makes sense to place the burden on the debtor because debtors are in the best position to prove that they are qualified to be in subchapter V.

In re RS Air, LLC, 638 B.R. 403, 414 (9th Cir. BAP 2022). *See also In re Ikalowych*, 629 B.R. 261, 275 (Bankr. D. Colo. 2021) ("The [d]ebtor bears the burden to prove his eligibility under Subchapter V.").

C. The Nature of Tax Debt

1. Consumer Debt Versus Non-Consumer Debt

"The term 'consumer debt' is statutorily defined to mean debt incurred by an individual 'primarily for a personal, family, or household purpose.'" *In re Hill*, 268 B.R. 548, 552 (9th Cir. BAP 2001) (citing 11 U.S.C. § 101(8)). However, "[f]or purposes of the Bankruptcy Code, ... IRS tax debt is categorized as non-consumer debt." *In re Decker*, 535 B.R. 828, 831 (Bankr. D. Alaska 2015) (citing *In re Westberry*, 215 F.3d 589, 591 (6th Cir. 2000) (noting, in the context of determining whether a debt is consumer debt for purposes of a codebtor stay, that "[a]lmost without exception, the bankruptcy courts that have addressed this question have determined that tax debt should not be considered consumer debt.")); *see, e.g., In re Brashers*, 216 B.R. 59, 60-61 (Bankr. N.D. Okla. 1998) (holding that, in the context of a motion to dismiss for abuse, income tax liability is not consumer debt); *In re Pressimone*, 39 B.R. 240, 245 (N.D. N.Y. 1984) (holding that, in the context of a codebtor stay, income tax liability is not consumer debt); *see also In re Stovall*, 209 B.R. 849, 854 (Bankr. E.D. Va. 1997) (holding that personal property tax debt was not consumer debt).

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In *Brashers*, the court considered whether a debtor's income tax obligations constituted consumer debt in the context of motion to dismiss the bankruptcy case for abuse under 11 U.S.C. § 707(b). *Brashers*, 216 B.R. at 60. The court held that the debtor's income tax debts were not consumer debts. *Id.*, at 61. Citing *Pressimone*, the court reasoned that "[t]ax liability is not 'incurred' as part of a consumption activity, but is involuntarily imposed in the course of earning income." *Id.*, at 60. In addition, the court reasoned that "[a] tax 'is not 'incurred,' but rather, is involuntarily imposed by a government for the public welfare" and "[s]uch public purpose is sufficient...to take the debt outside the scope of a consumer debt." *Id.*, at 60-61 (citing *Stovall*, 209 B.R. at 853-54).

2. Whether Non-Consumer Debt is Considered Business Debt

Although tax debt is not generally considered "consumer debt," it is not, by default, considered "business debt." *See Westberry*, 215 F.3d at 591; *In re Rickerson*, 636 B.R. 416, 428 (Bankr. W.D. Penn. 2021). "It is settled in [the Ninth Circuit] that the purpose for which the debt was incurred affects whether it falls within the statutory definition of 'consumer debt' and that debt incurred for business ventures or other profit-seeking activities does not qualify." *Hill*, 268 B.R. at 552-53 (citing *In re Kelley*, 841 F.2d 908, 913 (9th Cir.1988)). "If the debtor incurred the debt with a 'profit motive' or an 'eye toward profit,' then it is not a consumer debt." *In re Sullivan*, 626 B.R. 326, 331 (Bankr. D. Colo. 2021) (citing *In re Stewart*, 175 F.3d 796, 806 (10th Cir. 1999); *In re Booth*, 858 F.2d 1051, 1055 (5th Cir. 1988)).

However, "[t]he 'profit motive' test...is not readily applicable to debts incurred involuntarily, such as taxes, because the test relies upon the intent of the party in incurring the debt." *Brashers*, 216 B.R. at 61 n.2; *see also Westberry*, 215 F.3d at 593 ("[The] treatment of taxes under the Bankruptcy Code, as well as the distinctions between tax debt and consumer debt, indicate that the profit motive test...is not determinative of this issue."); *Stovall*, 209 B.R. at 854 ("a tax is...[a] kind of liability that falls into this 'interstitial' area of debts that are not consumer debts, but yet are not business debts.")).

In *Westberry*, the debtor and his nonfiling spouse jointly owed federal income and self-employment taxes. *Westberry*, 215 F.3d at 590. The debt related to one year in which the debtor was a self-employed insurance salesman. *Id.* The IRS began

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collection against debtor's nonfiling spouse, and the debtor filed a motion to enforce the codebtor stay. *Id.* The debtor stated that all of the income earned during the relevant year was used for personal, family, or household purposes to support the debtor, his nonfiling spouse and their dependents. *Id.* In addition, the debtor asserted that no business assets were acquired during the relevant year, and no money was spent on any "profit-making activities." *Id.* According to the debtor, because the money that should have been paid for his tax debt was spent on family and household purposes rather than business purposes, the tax debt should have been classified as consumer debt. *Id.*, at 591.

The Court of Appeals for the Sixth Circuit held that the tax debt did not constitute consumer debt. *Id.*, at 594. In reaching this decision, the Court of Appeals relied on four factors: (1) the debt was not incurred voluntary; (2) the debt was incurred for a public, rather than personal purpose; (3) the debt arose from the earning of money, as opposed to the consumption of money; and (4) the debt does not involve the extension of credit." *Id.*, at 590-91.

D. Debt Arising from a Debtor's Commercial or Business Activities

The Bankruptcy Code does not specifically define, the phrases "arises out of" or "commercial or business activities." *See In re Woods*, 743 F.3d 689, 693-94 (10th Cir. 2014); *Ikalowych*, 629 B.R. at 276. "The task of resolving the dispute over the meaning of ... [a statute] begins where all such inquiries must begin: with the language of the statute itself." *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989). "It is a fundamental canon of statutory construction that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 227, 134 S.Ct. 870, 187 L.Ed.2d 729 (2014) (internal quotations omitted).

"For [a] debt to have 'ar[isen] from the commercial or business activities of the debtor,' the debt must be directly and substantially connected to the 'commercial or business activities' of the debtor." *Ikalowych*, 629 B.R. at 288 (citing *Woods*, 743 F.3d at 698 (using dictionary definitions of "arise" as meaning "to originate; to stem (from)" or "to result from"). Courts have routinely looked to the definitions of "consumer debt" and "business debt" when considering what constitutes a debt arising

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from a commercial or business activity. *See, e.g., In re Bennion*, 2022 Bankr. LEXIS 2100, at *1 (Bankr. D. Idaho July 29, 2022) (finding medical debt did not arise from commercial or business activities); *Sullivan*, 626 B.R. at 333 (finding payment owed to ex-spouse as part of marriage dissolution did not arise from commercial or business activities, notwithstanding payment was meant to compensate ex-spouse for her share of the business the debtor was allowed to retain); *Rickerson*, 636 B.R. at 428 (finding personal income tax debt did not arise from commercial or business activities).

In *Ikalowych*, the debtor owned a limited liability company which he used as a "pass-through" entity for his "non-W-2" income and work (the "LLC"). *Id.*, at 267 and 271. In addition, the LLC owned a percentage of a second limited liability company (the "Business"). *Id.*, at 267. Prepetition, the debtor had managed the Business and personally guaranteed most of the Business' debts. *Id.* Roughly 86% of the debtor's debts were based on personal guarantees of the Business' debts. *Id.*, at 288. The United States trustee objected to the debtor's eligibility as a small business debtor under subchapter V. *Id.*, at 268. Although the United States trustee's objection focused on whether the debtor was engaged in commercial or business activities on the petition date, the court also analyzed whether 50% or more of the debtor's debt arose from commercial or business activities. *Id.*, at 268 and 687.

The court held that the debt based on the debtor's personal guarantees of the Business' debts "arose from" the debtor's "commercial or business activities" with both the Business and the LLC. *Id.*, at 288. The court reasoned that making financial guarantees for the Business, in which the debtor had an indirect equity interest, was a "commercial or business activity." *Id.* In addition, the court reasoned that the debtor's personal guarantees of the Business' debt allowed the business to obtain financing to operate, and that the debtor would not have personally guaranteed those debts unless it was to advance his own commercial and business interests. *Id.*

In *Rickerson*, the United States trustee opposed the designation of the debtor's chapter 11 case as one under subchapter V, asserting that the debtor's income tax debts represented her personal tax obligation that could not be classified as business debt. *Rickerson*, 636 B.R. at 427. The debtor was a doctor who owned, among others, a 100% interest in a professional corporation which "was formed to serve as the vehicle to provide [the debtor] with revenue from [her] ob-gyn practice." *Id.*, at 419-20. For at least some of the tax years in question, the debtor was an independent contractor of

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her professional corporation, which would have required the debtor to make quarterly tax payments on her income. *Id.*, at 429.

The court held that the debtor's tax liabilities did not arise from her commercial or business activities. *Id.* The court reasoned that, "as to the years in which the Debtor was an independent contractor for the Professional Corporation, it would have been her *personal responsibility* to pay her taxes." *Id.* (emphasis added). The court was not persuaded by the debtor's arguments that the tax debt arose from her commercial or business activities; rather, it noted that the debt arose from "taxes [the debtor] owed on *personal income*." *Id.* (emphasis added).

In *Sullivan*, the debtor stated that a property settlement debt to his ex-wife constituted business debt, and therefore at least 50 percent of his debt arose from his commercial or business activities. *Sullivan*, 626 B.R. at 328. There, the debtor's ex-wife moved to convert the case to one under chapter 7 of the Bankruptcy Code and asserted that the property settlement debt was non-business debt. *Id.* At the time the debtor and his ex-wife divorced, he owned and operated a chain of movie theatres. *Id.* The divorce court awarded the ex-wife an "equalization payment" to compensate her for her share of the business' value and other marital assets. *Id.* However, when the COVID-19 pandemic hit, the debtor had to close the theatres and eventually liquidate the business. *Id.*, at 329. The debtor had sought to modify the divorce award and ultimately filed his bankruptcy case to delay payment to his ex-wife. *Id.*

The debtor contended that the equalization payment debt arose from business or commercial activity because it represented a transfer of a portion of the business' value, likening it to one partner buying out another partner's interest in a business. *Id.*, at 331. The court disagreed, holding that the equalization payment did not arise from a business or commercial purpose. *Id.*, at 333. The court reasoned that, although the equalization payment concerned the debtor's primary occupation at the time, for a business that the debtor owned, the purpose of the transaction was not a business purpose. *Id.*, at 332. In considering the source of the debt, the court reasoned that "[t]he equitable distribution of their marital property was not a business or commercial transaction—it did not stem from a profit motive," and that the equitable distribution of marital property was an "inherently a personal and family-related purpose." *Id.*, at 333. Finally, the court noted that "[t]he fact that the parties' marital property included a business does not alter the underlying *purpose* of the property division." *Id.* (emphasis

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III. ANALYSIS

***A. Debtor's Debt for Personal Income Taxes Does Not Constitute a Debt Which
Arose from Debtor's Commercial or Business Activities***

There is no dispute that Debtor's tax debt is not consumer debt. However, in connection with his eligibility to be a debtor under chapter 11, subchapter V of the Bankruptcy Code, the UST and Debtor dispute the relevance of such a determination. The UST contends that, relying on the debts for personal income taxes listed in Debtor's schedules or the proofs of claim filed by the IRS and the FTB, more than 50% of the Debtor's total debt comes from his income tax liabilities and that this debt did not arise from Debtor's commercial or business activities. Conversely, Debtor asserts that his tax obligations owe their existence to, and came into being as a result of, his commercial or business activities. According to Debtor, but for his commercial activities of acting and the operations of his businesses, his debts for personal income taxes would not exist.

Here, like in *Westberry*, *Pressimone* and *Brashers*, Debtor's income tax obligations were neither voluntary nor negotiated. *Westberry*, 215 F.3d at 591; *Pressimone*, 39 B.R. at 245; *Brashers*, 216 B.R. at 60. Rather, they were involuntarily imposed by the government in the course of assessing Debtor's earned income, which Debtor utilized for personal, consumer purposes. *Id.* Debtor's tax liabilities did not involve any extension of credit. *Westberry*, 215 F.3d at 591.

Debtor's argument that his tax debt arose from his commercial or business activities is unconvincing. Debtor's tax liability is based on his income from personal services, i.e., primarily by acting. Like in *Rickerson*, Debtor utilizes his pass-through entities to receive the majority of his income. *Rickerson*, 636 B.R. at 419-20. Debtor's businesses are not responsible for payment of Debtor's personal income tax debt; Debtor is. *Id.* at 429.

Unlike the debtor in *Ikalowych*, it appears that Debtor's obligations are not based on his personal guarantee of his businesses' debt; they primarily arise from taxes on his earnings for personal services. *Ikalowych*, 629 B.R. at 288. In addition, Debtor's tax debt was not undertaken for the purpose of earning income. *Id.*, at 271 and 276. [FN

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B. The Calculation of Qualifying Claims

Debtor agrees that the claims of LA County, Toyota and Gregory Funding represent consumer debts. As to his remaining debts, the following chart (based on proofs of claim filed by the creditors) reflects the calculations:

Claimant	Amount of Claim	Characterization
LA County	\$15,877.29	Consumer (undisputed)
Toyota	\$66,215.71	Consumer (undisputed)
Gregory Funding	\$294,293.26	Consumer (undisputed)
Carrington	\$302,806.35	Consumer [FN 4]
IRS	\$2,251,835.50 (based on earned income)	Not arising from commercial or business activities
FTB	\$233,359.58 (based on earned income)	Not arising from commercial or business activities
Bank of America	\$7,556.28	Business (undisputed)
TOTAL:	\$3,171,943.97	TOTAL DEBT ARISING FROM COMMERCIAL OR BUSINESS ACTIVITIES: \$7,556.28

Only \$7,556.28 of the claims against Debtor arise from his commercial or business activities (this excludes his debts arising from personal income taxes); the remainder of the claims, in the aggregate amount of \$3,164,387.69, do not. Consequently, Debtor does not qualify as a debtor eligible to file a chapter 11 case under subchapter V.

Assuming, for the sake of argument, that Debtor is correct that his personal income tax debts *did* arise from his commercial or business activities, Debtor still would not be eligible to be a subchapter V debtor. Debtor's tax liabilities are comprised of: (1) delinquent taxes; (2) interest; (3) penalties; and (4) costs. Even if Debtor's delinquent personal income taxes arose from his commercial or business activities, the related interest, penalties and costs payable to the IRS and the FTB did not. Rather, those

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obligations result from Debtor's failure to pay his personal income taxes as they came due. If the interest, penalties and costs due to the IRS and the FTB are separated from Debtor's unpaid tax obligations, the amount of Debtor's aggregate unpaid personal income taxes is \$1,560,456.83. As illustrated below, when this unpaid liability for personal income taxes is added to Bank of America's undisputed business debt, this constitutes less than 50% of Debtor's debts:

Debt Not Arising from Debtor's Commercial or Business Activities	Amount		Unpaid Personal Income Taxes and Business Debt	Amount
IRS Interest	\$389,582.40		IRS Tax Debt	\$1,435,139.00
IRS Penalties	\$427,114.10		FTB Tax Debt	\$125,317.83
FTB Interest	\$27,236.29		Bank of America	\$7,556.28
FTB Penalties	\$80,695.46		TOTAL:	<i>\$1,568,013.11</i>
FTB Costs	\$110.00			
LA County	\$15,877.29			
Toyota	\$66,215.71			
Gregory Funding	\$294,293.26			
Carrington	\$302,806.35			
TOTAL:	\$1,603,930.86			

Assuming Debtor's unpaid personal income taxes constitute business debts, \$1,568,013.11 of the claims against Debtor would arise from his commercial or business activities (excluding the interest, penalties and costs arising from his untimely payment of personal income taxes); the remainder of the claims, in the aggregate amount of \$1,603,930.86, do not. Consequently, if Debtor's unpaid personal income taxes constitute debts arising from his commercial and business activities, because of related penalties, interest and costs payable to the IRS and the

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FTB, and his consumer debts, Debtor still would not be eligible to file a chapter 11 case under subchapter V.

IV. CONCLUSION

The Court will grant the Motion.

Movant must submit an order within seven (7) days.

FOOTNOTES

FN 1: At his meeting of creditors, Debtor testified that he has a collection of about nine older vehicles with values ranging from \$2,000 to \$15,000. Exh. D to the Cooper Declaration, pp. 102-04.

FN 2: Although Debtor classifies the debt owed to the IRS and the FTB as priority unsecured debt, the IRS' amended proof of claim states that \$1,131,459.27, i.e., approximately half of its claim, is secured. *See* Proof of Claim No. 3-2. The FTB's proof of claim states that its claim is fully secured. *See* Proof of Claim No. 6-1.

FN 3: As noted above, the SBRA was implemented to ease the difficulties that small businesses encountered in successfully reorganizing under chapter 11 of the Bankruptcy Code, such that the debtors' continued business operations would benefit not only the business owners, but also employees, suppliers, customers and others who relied on those businesses. *See Johnson*, 2021 WL 825156, at *6 (internal citations and quotations omitted). Here, the Plan is not about restructuring or winding down a business. Instead, the Plan predominantly concerns setting up a schedule for the repayment of Debtor's delinquent income taxes and related interest and penalties to the IRS and the FTB.

FN 4: In the Trejo Declaration, Debtor states that the debt owed to Carrington in connection with the Branford Property arose from commercial/business activities because it is a mortgage for nonowner occupied real property. *See* Trejo Declaration, ¶ 3. However, it appears that this debt did not arise from commercial and business activities. At his meeting of creditors, Debtor

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testified that he inherited the Branford Property from his mother, that he does not rent this property and that his daughter has resided there, without paying rent. Exh. D to the Cooper Declaration, pp. 99 and 101. As such, the Court concludes that the debt secured by the Branford Property did not arise from Debtor's commercial or business activities.

Party Information

Debtor(s):

Danny Trejo

Represented By
Jeffrey S Shinbrot

Trustee(s):

Andrew W. Levin (TR)

Pro Se

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1:23-10219 Danny Trejo

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#8.00 Status of Chapter 11, Subchapter V Case and Requiring
Report On Status Of Chapter 11, Subchapter V Case

fr. 4/6/23

Docket 1

Tentative Ruling:

If the Court grants the motion filed by the United States Trustee to strike the debtor's designation of this case as one under subchapter V [see cal. 7]:

(1) will the debtor file an amended chapter 11 plan?

(2) when can the debtor file a proposed disclosure statement with respect to his existing chapter 11 plan [doc. 45] or an amended chapter 11 plan?

What is the status of any discussions regarding the debtor's payment of the claims of the Internal Revenue Service and/or the Franchise Tax Board, through a chapter 11 plan?

When will the debtor be filing his income tax returns for 2022?

No later than **14 days** before a continued status conference, the debtor in possession must file a status report, addressing the debtor's progress to confirming a chapter 11 plan, to be served on the debtor's 20 largest unsecured creditors, all secured creditors and the United States Trustee. The status report **must be supported by evidence in the form of declarations and supporting documents.**

The Court will prepare the order continuing the status conference.

Party Information

Debtor(s):

Danny Trejo

Represented By
Jeffrey S Shinbrot

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Trustee(s):

Andrew W. Levin (TR)

Pro Se

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1:22-11504 Drita Pasha Kessler

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#9.00 Status conference re: chapter 11 subchapter V case
fr. 2/16/23; 4/13/23; 6/8/23

Docket 1

Tentative Ruling:

In light of the debtor's recent filing of her small business monthly operating report for April 2023 [doc. 115], the Court will continue this chapter 11 case status conference to July 6, 2023 at 2:00 p.m., to be held in conjunction with the continued hearing on the objection of Travelers Property Casualty Company of America to the debtor's homestead exemption claim [doc. 40].

Appearances on June 15, 2023 are excused.

Party Information

Debtor(s):

Drita Pasha Kessler

Represented By
Leonard Pena

Trustee(s):

Robert Paul Goe (TR)

Pro Se